

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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| AUTHORS GUILD, et al., | : | |
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| Plaintiff, | : | 23-cv-8292 (SHS) (OTW) |
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| -against- | : | And the Consolidated Cases: |
| | : | 23-cv-10211 (SHS) (OTW) |
| OPENAI INC., et al., | : | 24-cv-84 (SHS) (OTW) |
| | : | |
| Defendants. | : | <u>ORDER</u> |
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|--------------------------------|---|-----------------------------|
| THE NEW YORK TIMES COMPANY., | : | |
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| Plaintiff, | : | 23-cv-11195 (SHS) (OTW) |
| | : | |
| -against- | : | And the Consolidated Cases: |
| | : | 24-cv-3285 (SHS) (OTW) |
| MICROSOFT CORPORATION, et al., | : | 24-cv-4872 (SHS) (OTW) |
| | : | |
| Defendants. | : | <u>ORDER</u> |
| | : | |

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ONA T. WANG, United States Magistrate Judge:

The Court held a status conference on these matters on October 30, 2024. For the reasons stated on the record, it is hereby **ORDERED**:

I. Authors Guild, et al. v. OpenAI Inc., et al., No. 23-cv-8292, and consolidated cases (the “Authors Cases”).

- A. The last day to amend the pleadings or join additional parties without leave of Court is **January 8, 2025**.
- B. Depositions: The parties have identified a dispute over adding more custodians (the “Disputed Custodians”) for Defendants’ document search, review, and production of ESI. Defendants had previously been directed to preserve the Disputed Custodians’ documents. They are now directed to provide hit counts¹ for the Disputed Custodians by filing a status letter no later than **November 13, 2024**. After that search is run, the parties are directed to meet and confer to discuss whether they can reach agreement on production of any Disputed Custodians’ ESI.
- C. The parties are directed to meet and confer regarding the current dispute over the scope of custodial topics and file a joint letter on the docket by **Friday, November 1, 2024**, apprising the Court on whether the dispute has been resolved.

II. The New York Times Co. v. Microsoft Corp. et al., 23-cv-11195, and consolidated cases (the “Newspaper Cases”).

- A. Defendants’ motion to consolidate (ECF 256) Case No. 24-cv-4872 (Center for Investigative Reporting, Inc. v. OpenAI, Inc., et al.) with Case No. 23-cv-11195 and consolidated cases (24-cv-3285) is **GRANTED**.

¹ The hit counts will be the result of using the same body of search terms that are applied to the currently agreed custodians.

- B. The interim fact discovery date of **December 20, 2024**, applies to the newly consolidated cases.
- C. The last day to amend the pleadings or join additional parties without leave of Court is **January 8, 2025**.
- D. Plaintiffs' motion for the entry of a deposition coordination protocol (ECF 261) is **DENIED** as premature.
- E. Depositions: The parties have identified a dispute over adding certain "Disputed Custodians" for Defendants' document search, review, and production of ESI. (ECF 204). Defendants had previously been directed to preserve the Disputed Custodians' documents. They are now directed to provide hit counts² for the Disputed Custodians by filing a status letter no later than **November 13, 2024**. After that search is run, the parties are directed to meet and confer to discuss whether they can reach agreement on production of any Disputed Custodians' ESI.
- F. Search Terms and Hit Counts: The parties also reached an impasse on their discussions regarding search terms and hit counts. (*See, e.g.*, Tr. at 65-76; ECF 228). As discussed at the conference, the "total hit count" will be capped at or around 500,000 for the current set of agreed custodians, without regard to the number of Disputed Custodians that later may be added, whether by agreement or Court order. The parties are directed to keep Rule 26(b)(1) in mind

² The hit counts will be the result of using the same body of search terms that are applied to the currently agreed custodians.

when meeting and conferring about rolling productions, search terms, and added custodians. (*See, e.g.*, Tr. At 73-75).

- G. The parties are directed to meet and confer by **November 6, 2024**, on the issue of whether Defendants will search for and produce text and direct messages of certain employees of Defendants and whether the motion to compel (ECF 230) will be withdrawn. If the parties cannot resolve the issues raised in ECF 230 on their own, Plaintiffs may serve interrogatories and/or subpoenas, as necessary, with respect to their motion to compel, and the Court may apportion costs under Rule 37(a)(5) as necessary.
- H. Defendants' motion to compel certain prompts and outputs from The Times' pre-suit investigation (ECF 284) is **DENIED without prejudice**.
- I. The parties are directed to meet and confer regarding the issue of training data identified at the conference and file a joint letter by **Friday, November 1, 2024**, apprising the Court on the status of the issue.

III. Other Issues Pertaining to Both Cases.

- A. The parties to each consolidated case are directed to file a joint chart by **Wednesday, November 6, 2024**, identifying categories or "buckets" of document production disputes that remain in this case. The chart should identify (1) the dispute, (2) each party's position in no more than two paragraphs, and (3) the relevant ECF numbers for such dispute (including oppositions and replies).
- B. The parties to each consolidated case are also directed to file an updated joint chart by **November 22, 2024**, identifying any new or resolved issues. The parties

are directed not to file new or supplementary discovery letters or motions between **November 23, 2024**, and **December 3, 2024**. Any such motion will be stricken and will not be considered. If the parties have any updates to the November 22 joint chart, they should be prepared to address those updates orally at the conference.

- C. To aid in the Court's review of the numerous disputes that have and will continue to arise in this case, all parties are directed to, when filing any opposition or reply, include hyperlinks to the relevant motion.
- D. The Court will hold an **Omnibus In-Person Status Conference for all cases on Tuesday, December 3, 2024, at 9:30 a.m.** in Courtroom 20D, 500 Pearl Street, New York, NY 10007.

SO ORDERED.

Dated: October 31, 2024
New York, New York

s/ Ona T. Wang
Ona T. Wang
United States Magistrate Judge